

ORIGINAL NEW APPLICATION



BEFORE THE ARIZONA CORPORATION COMMISSION

2007 MAR 30 P 3: 56

Arizona Corporation Commission

DOCKETED

MAR 30 2007

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T-03943A-07-0205

T-04113A-07-0205

T-04112A-07-0205

IN THE MATTER OF THE JOINT)
APPLICATION OF TIME)
WARNER TELECOM OF)
ARIZONA, LLC, XSPEDIUS)
MANAGEMENT CO. SWITCHED)
SERVICES, LLC, AND XSPEDIUS)
MANAGEMENT CO. FOR (1))
AUTHORIZATION TO)
TRANSFER ASSETS; (2))
CANCEL CC&Ns; AND (3) FOR)
ELIMINATION OF)
PERFORMANCE BOND)

DOCKET NO. T-03943A-07-
DOCKET NO. T-04112A-07-
DOCKET NO. T-04113A-07-

APPLICATION AND REQUEST FOR EXPEDITED CONSIDERATION

APPLICATION

I. Overview

Time Warner Telecom of Arizona LLC, Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Pima County, LLC (collectively “Applicants”), all subsidiaries of Time Warner Telecom, Inc. (“Time Warner Telecom”) the ultimate parent corporation, through this Joint Application by their attorneys and pursuant to A.R.S. § 40-285, hereby respectfully request that the Arizona Corporation Commission ("Commission") (a) approve or grant such authority as may be necessary to

allow the Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Pima County, LLC ("Xspedius Certified Subsidiaries") to transfer all of their assets, including customer base, to Time Warner Telecom of Arizona LLC ("TWTA"), (b) cancel the certificates of convenience and necessity ("CC&Ns") of the Xspedius Certified Subsidiaries and (c) eliminate the three performance bonds, totaling \$2.17 Million Dollars, imposed on Applicants by the Commission.¹

II. Application for Consolidation

A. The Applicants

1. Time Warner Telecom

Time Warner Telecom, headquartered in Littleton, Colorado, is a leading provider of managed voice and data networking solutions for businesses customers. Time Warner Telecom also integrates data, dedicated internet access, and local and long distance voice services for long distance carriers, wireless communications companies, incumbent local exchange carriers, and enterprise organizations in the healthcare, finance, higher education, manufacturing, and hospitality industries. The company's stock is publicly traded on the NASDAQ under the symbol "TWTC."

¹ Time Warner Telecom's acquisition of Xspedius Communication, LLC ("Xspedius Parent"), the parent of Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Pima County, LLC (collectively the "Xspedius Certified Subsidiaries"), was consummated on October 31, 2006. The Commission approved transfer of control of Xspedius Parent in Docket Nos. T-03943A-06-0495, T-04112A-06-0495, and T-04113A-06-0495, Decision No. 68958, on September 21, 2006. Accordingly, Xspedius Parent is a direct, wholly owned subsidiary of TWT. The Xspedius Certified Subsidiaries, as wholly owned subsidiaries of Xspedius Parent, are also subsidiaries of TWT. (See Time Warner Telecom Inc. & Arizona Subsidiaries Current Arizona Structure Chart ("Pre-Application Structure Chart"), attached hereto as Exhibit A.)

Time Warner Telecom is authorized by the FCC to provide interstate and international telecommunications services and, through one or more of its subsidiaries, is authorized to provide intrastate interexchange and competitive local exchange services in 33 states, Washington D.C., and the FCC/Interstate jurisdiction. In Arizona, TWTA is a leading provider of "last-mile" broadband data, voice, dedicated internet access, and dedicated web hosting to business customers in the Phoenix and Tucson metropolitan areas. TWTA entered the Phoenix and Tucson markets by purchasing out of bankruptcy substantially all of the assets of GST-AZ Net, Inc. In December of 2000, the Arizona Corporation Commission approved that transfer (and the certification of TWTA) in Decision No. 63262. In that decision, the Commission concluded that TWTA and its corporate parent, Time Warner Telecom, possess the requisite financial, managerial, and technical qualifications necessary to provide competitive local exchange and interexchange telecommunications services in Arizona.²

2. Xspedius

The Xspedius Certified Subsidiaries are limited liability companies formed under the laws of the State of Delaware. Both companies were certified as competitive local exchange carriers by the Arizona Corporation Commission in Decision No. 65124 (August 23, 2002). Xspedius Certified Subsidiaries provide local, long distance, integrated, and internet access solutions to small and medium-sized business customers. The Xspedius Certified Subsidiaries presently serve no residential customers.

² TWT's most recent Annual Report and Form 10-Q which contains the consolidated financial statements of TWT and subsidiaries can be accessed at <http://www.twtelecom.com/investors/investors.html>.

3. The Combined Company

In September 2006, the Commission approved Time Warner Telecom's acquisition (by merger) of the Xspedius Certified Subsidiaries. *See* Decision No. 68958. The acquisition of the Xspedius Certified Subsidiaries has resulted in a combined competitive carrier that holds sufficient financial, managerial, operations and technical resources to compete on a national basis against established and incumbent local exchange carriers and long distance companies. Prior to the merger with Time Warner Telecom, Xspedius Certified Subsidiaries provided integrated telecommunications services to small and medium-sized enterprise customers in 20 states across the Southern and Southwestern United States, including Arizona. By acquiring ownership of Xspedius Communications, LLC and its subsidiaries and substantially all of their assets, Time Warner Telecom pooled the resources of Time Warner Telecom and Xspedius Communications, LLC such that the combined company can compete more effectively in the markets in which they both operate, provide new services and expand into new markets, and achieve economies of scope and scale. Time Warner Telecom, through its three Arizona subsidiaries, serves only business customers.

To further streamline and simplify its corporate structure, Time Warner Telecom intends to transfer the assets and customers of the Xspedius Certified Subsidiaries into TWTA. After completion of the consolidation, Time Warner Telecom will remain the ultimate corporate parent and it will have only one subsidiary operating in Arizona, TWTA.

B. Designated Contacts

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C. Description of the Consolidation

The consolidation of the Applicants into a single operating entity, currently named TWTA, will occur by way of an asset transfer. The Applicants propose to transfer the Xspedius Certified Subsidiaries' assets, including the customer base, to TWTA, with TWTA assuming all of the Xspedius Certified Subsidiaries' assets and operations. Charts illustrating the corporate structure before and after the consolidation are attached hereto as Exhibits A (pre-consolidation) and B (post-consolidation).

Upon consummation of the proposed consolidation, TWTA will provide service to the current customers of TWTA, Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Pima County, LLC.³ The proposed consolidation is not

³ Xspedius Communication, LLC, the parent of Xspedius Management Co. Switched Services, LLC and Xspedius Management Co. of Pima County, LLC, is not certificated in Arizona.

expected to result in any loss or impairment of services to the Applicants' customers. The proposed internal consolidation will simplify the Time Warner Telecom corporate structure; streamline Time Warner Telecom's operations in Arizona, eliminate administrative redundancy and improve overall efficiency. The Applicants anticipate that the consolidation in Arizona will occur after receipt of the required regulatory approvals in Arizona; thus, the Applicants request that the Commission take any action necessary to approve this application at its earliest convenience.

D. Notice to Xspedius Customers

Following the completion of the asset transfer, TWTA will provide local, long distance and dedicated telecommunications services to the Xspedius Certified Subsidiaries. To avoid customer confusion or inconvenience, the Applicants will provide written notice to the affected customers of Xspedius Certified Subsidiaries in Arizona on or about May 9, 2007, which will be at least thirty (30) days prior to the transfer. This notice will be sent in compliance with the applicable Federal Communication Commission ("FCC") and state requirements for changing a customer's presubscribed carrier. *See* AAC R14-2-1901-1913. A copy of the notice to be sent to customers of the Xspedius Certified Subsidiaries will be provided to Staff as soon as possible. (Part II below regarding company name change sheds light on timing issues.) All customer contracts of Xspedius Certified Subsidiaries will be honored post-transfer and the customers of Xspedius Certified Subsidiaries will not experience any change in their rates or service arrangements. The Applicants expect that the transfer of customers will be

transparent to customers of the Xspedius Certified Subsidiaries with respect to rates, terms and conditions of service.

E. Tariffs

TWTA will revise the TWTA tariff to incorporate the terms and conditions of service included in the Xspedius Certified Subsidiaries' tariffs. This will allow TWTA to make available rates and services provided to customers of Xspedius Certified Subsidiaries for the remaining term of any Xspedius Certified Subsidiaries' customer contracts. Additionally, for the immediate future, TWTA will continue to offer Xspedius Certified Subsidiaries' products and services to Xspedius Certified Subsidiaries' customers not under contract at the Xspedius Certified Subsidiaries' rates. TWTA expects to gradually replace the products and services offered by the Xspedius Certified Subsidiaries with new (and in many cases improved) products and services offered by TWTA.

F. Discontinuance of Service

In connection with the asset transfer, the telecommunications authorizations currently held by the Xspedius Certified Subsidiaries will be surrendered, upon completion of the transfer of the Xspedius Certified Subsidiaries' customers to TWTA. In conjunction with the surrender of the Xspedius Certified Subsidiaries' authorizations, the Applicants seek permission to discontinue local exchange service for current Xspedius Certified Subsidiaries' customers (who will have already been transferred to TWTA) and cancel the Xspedius Certified Subsidiaries' certificates of convenience and necessity. Xspedius Certified Subsidiaries' customer contracts will be fully honored by

TWTA, with services provided by TWTA according to the customer contracts' terms.

The Xspedius Certified Subsidiaries will then cease providing service. Therefore, pursuant to A.A.C. R14-2-1107(A), the Applicants provide the following information.

Reason for Discontinuance: The Xspedius Certified Subsidiaries will discontinue service to customers because they will have been transferred to TWTA and Time Warner Telecom and Time Warner Telecom will be serving all Applicants' current customers via a single corporate subsidiary, TWTA.

Verification of Customer Notification: All the Xspedius Certified Subsidiaries' customers were previously notified of the Time Warner Telecom acquisition in connection with the Commission's approval of that transaction in Decision No. 68958. These customers will again be notified of the transfer in connection with this application. Applicants will provide the form of this additional customer notice letter to Commission Staff.

Deposits: As of the date of this application, the Xspedius Certified Subsidiaries, together, maintain customer deposits from fewer than 10 customers which amount to less than Five Thousand Dollars (\$5,000). The Applicants have developed a plan for refunding to these deposits, should the affected customers decide to switch service providers.

Alternative Utilities: Attached hereto as Exhibit C is a list of the alternative utilities providing local and interexchange service in the two Xspedius Certified Subsidiaries' service areas.

Pursuant to A.A.C. R14-2-1107(B), the Xspedius Certified Subsidiaries will publish legal notice of this application to discontinue service and will submit that notice in this docket as soon as it is available.

G. Public Interest Analysis

The consolidation proposed in this Application will serve the public interest. The consolidation will be largely transparent to customers and will have no adverse impact on the services they receive. Current Xspedius Certified Subsidiaries end users will continue to receive services under the same rates, terms and conditions that currently apply to their services and any future changes in the rates, terms, and conditions of those services will be made consistent with Commission requirements. In accordance with applicable FCC and state carrier change requirements, advance written notice will be sent to affected customers informing them of the proposed transaction. For current TWTA customers, the consolidation will have no visible impact. The proposed consolidation will reduce legal, accounting and tax administrative burdens and will simplify the Time Warner Telecom corporate structure, eliminating administrative redundancy and improving the company's overall efficiency. This improved efficiency will enhance the company's ability to compete in Arizona and elsewhere. As reflected in the organizational charts, attached hereto as Exhibits A and B, upon completion of the consolidation, the ownership of TWTA will be identical to the current ownership of TWTA and the Xspedius Certified Subsidiaries. Thus, there should be no question about the qualifications of TWTA and its parent, Time Warner Telecom, to operate in the

public interest as the consolidation will not cause any meaningful change in the ownership or financial condition of the utility subsidiaries.

The Applicants respectfully request that the Commission authorize, to the extent necessary, the transfer of assets and the customers of the Xspedius Certified Subsidiaries to TWTA.

II. Name Change

The license agreement which allows Time Warner Telecom to use the name of its major shareholder, Time Warner, will expire in early July 2007. Time Warner Telecom welcomes this opportunity to re-brand and distinguish itself, and plans to publicly announce its new name on or about May 9, 2007.⁴ While this name change does not impact the merits of this Application, the imminence of the name change presents an opportunity to send a concise and comprehensive notice to customers explaining all that is happening with the company. The name change will have no substantive effect on the proposed consolidation; however TWTA's tariff will need to be revised to reflect the new name and customers will be notified. TWTA end users will continue to receive service according to the applicable rates, terms and conditions in effect prior to the name change.

Applicants will file all necessary documents with the Arizona Corporation Commission and the Arizona Secretary of State to implement the name change and will supplement this Application with that documentation.

⁴ Time Warner Telecom has submitted the new name it anticipates using to the United States Patent and Trademark Office ("PTO") for approval. Until the PTO approves Time Warner Telecom's application, the new name remains confidential. When the new name is publicly announced, TWTA will supplement this application.

III. Elimination of Performance Bond

Applicants request that the Commission eliminate the three performance bonds (totaling \$2.17 million dollars) that the Applicants are currently obliged to maintain.⁵

Under the relevant Arizona rule, the Commission “*may* require . . . the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers.” A.A.C. R14-2-1105(D) (emphasis added). The Commission may also order that customer advances or deposits be held in escrow or trust. *Id.* This rule permitting the Commission to require a bond is found in the Competitive Telecommunications Services Rules and was invoked by the Commission, as early as 2000, to protect consumers in the event a telecommunications carrier declared bankruptcy or abandoned service. *See, e.g.,* Decision No. 62751 (2000) (*Eschelon Telecom of Arizona CC&N Application*). At that time, many providers were new to Arizona and very few carriers had invested in equipment and facilities. The new competitive local exchange carriers (“CLECs”) did not have demonstrable operating histories, nor could they offer track records of customer satisfaction. During this period, a bond requirement was the vehicle selected by Commission Staff to protect consumers in the event a provider could not meet its legal obligations. Bonds were a reasonable way for the Commission to protect consumers from asset-less companies with few ties to Arizona.

⁵ The Commission has imposed bonds of \$1.7 Million Dollars on TWTA and \$235 Thousand Dollars on each of the Xspedius Certified Subsidiaries.

Now, years later, the market is very different. Far fewer telecommunications companies remain, and most of those remaining have invested heavily in Arizona. These CLECs individually own switches, equipment and fiber cable valued in the millions. It is no longer the case that customer deposits or advances are at risk if the company should declare bankruptcy or abandon service. If a company with assets seeks bankruptcy protection, either the company will reorganize and emerge from bankruptcy with manageable debt, or the provider's equipment and customer base (deposits and all) will be purchased out of bankruptcy. Indeed, customer deposits and advances are no more at risk with an established, facilities-based CLEC like Time Warner Telecom than they are with Qwest, Cox, or Sprint – all of which operate in competition with facilities-based CLECs but carry no performance bonds.

This bond is also an unnecessary burden in this case because Applicants serve only business customers. Business customers are generally aware that there is an array of alternatives for voice and data services and are anxious to implement the newest and most efficient technologies. Product performance, price and reliable service are paramount. In the event a carrier ceases to provide telecommunications services, a business customer will not be left without provider alternatives as inevitably a different facilities-based provider will want to serve that customer. Unlike the current residential market, multiple providers often vie for the same business customer. Consequently, business customers are better protected from the potential harm generally associated with an unexpected change in carrier.

Consistent with this lower risk of harm is the national pattern of very low or non-existent bond requirements for facilities-based CLEC providers. A survey of bond policies conducted for A.C.C. Docket No. T-03406A-99-0742 produced the following list of twenty-seven states that do not require a performance bond from a facilities based CLEC:

Alabama	Kansas	Montana	South Carolina
Arkansas	Kentucky	New Jersey	Texas
California	Maine	New Mexico	West Virginia
Georgia	Massachusetts	New York	Wyoming
Hawaii	Michigan	North Carolina	Washington
Indiana	Mississippi	Ohio	Wisconsin
Iowa	Missouri	Oregon	

Alaska requires a *de minimis* bond (\$1,000-\$5,000). It is thus evident that most states, including many with extensive CLEC telecommunications networks, do not see the need for a performance bond.

Finally, it is worth noting that the current bonds required of Time Warner Telecom, totally \$2.17 Million Dollars, are entirely out of proportion with the amount of Arizona customer deposits actually being held by the Applicants. As of the time of this application, TWTA maintains deposits totaling less than One Hundred Thousand Dollars (\$100,000) and the Xspedius Certified Subsidiaries, together, maintain deposits totaling less than Ten Thousand Dollars (\$10,000).

For these reasons, the Applicants request that no bond requirement be imposed on the Applicants following the completion of the consolidation contemplated in this application. The Applicants, facilities-based CLECs that have provided service to

business customers in Arizona for seven years have clearly established through their investment in the state, and by virtue of their operating history, that the relatively low dollar customer deposits that will be maintained by TWTA post-consolidation are not at risk.

V. Conclusion

The Applicants respectfully request that the Commission approve this application to transfer customers and assets, cancel the CC&Ns held by the Xspedius Certified Subsidiaries and eliminate the Applicants' current performance bonds requirements.

DATED this 30th day of March 2007.

OSBORN MALEDON, PA

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Original and 17 copies of the foregoing
filed this 30 day of March 2007, with
Docket Control.

Exhibit A

**Time Warner Telecom Inc. & Arizona Subsidiaries
Pre Reorganization**

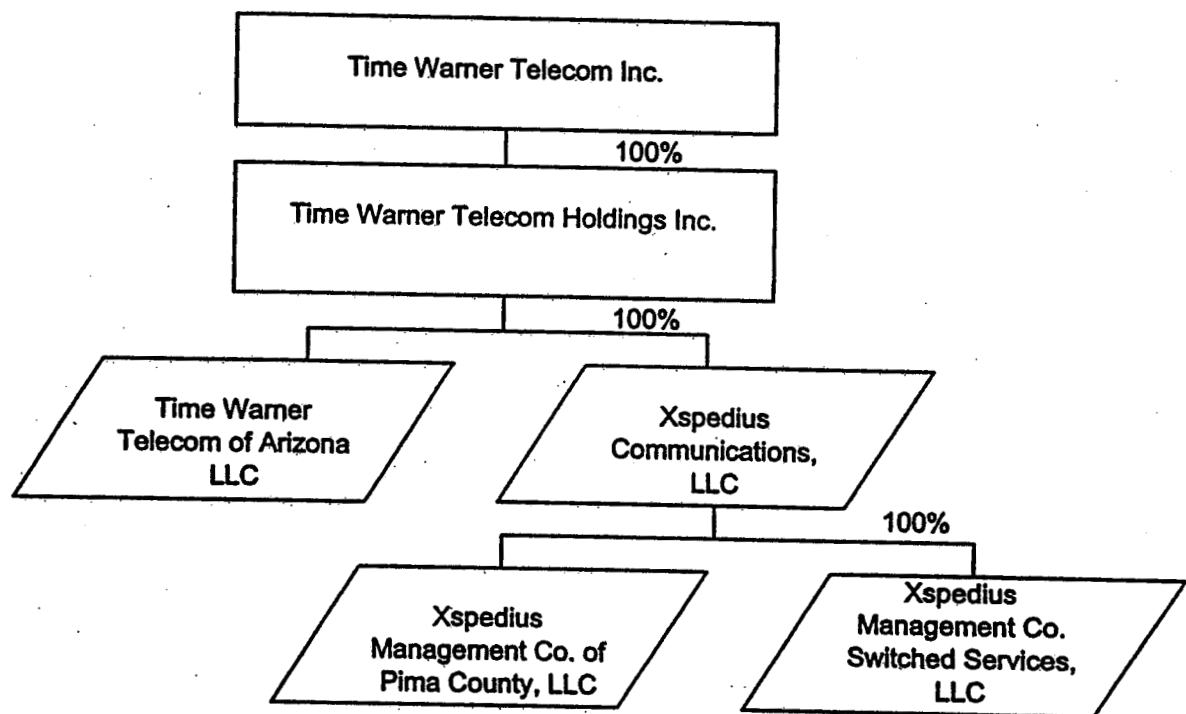


Exhibit B

**Time Warner Telecom Inc. & Arizona Subsidiaries
Post Reorganization**

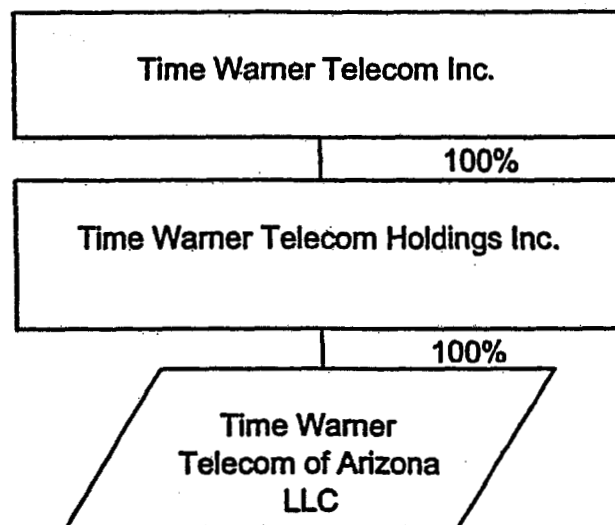


EXHIBIT C

ALTERNATE PROVIDER LIST¹

Air Band Communications, Inc.
AT&T Local Network Services, Inc.
Broadwing Local Service Inc.
Cox Arizona Telcom, Inc.
DSLNET Communications
Eschelon Telecom of Arizona, Inc.
Integra Telecom of Arizona, Inc.
Jet Stream Unlimited
Mcleod Telecommunications Services, Inc.
Sprint Communications
Verizon Communications, Inc.
XO Communications Services, Inc.

¹ This is a non-exhaustive list of possible alternate providers.